

**Tax Map/Block/Parcel  
No. 59-17-665**

**Case 5498**

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** Mudgett Family, LLC  
c/o James Mudgett  
2960 Dede Road  
Finksburg, Maryland 21048

**ATTORNEY:** Clark R. Shaffer

**REQUEST:** An appeal of the determination of the Zoning Administrator concerning a swimming pool as a prohibited use in a Planned Business Center.

**LOCATION:** The site is located at NE/S MD Route 140 at Dede Road, Finksburg, MD 21048 on property zoned "I-R" Restricted Industrial District in Election District 4.

**BASIS:** Code of Public Local Laws and Ordinances, Section 103-51, 223-118 (B) and 223-2 (Definition of Planned Business Center)

**HEARING HELD:** June 26, 2009

**FINDINGS AND CONCLUSION**

On June 26, 2009, the Board of Zoning Appeals (the Board) convened to hear an Appeal of the determination of the Zoning Administrator concerning her conclusion that a swimming pool is a prohibited use in a planned business center. Based on the testimony and evidence presented, the Board made the following findings and conclusion:

The subject property is located in a planned business center on MD Route 140 at Dede Road. The property is zoned "I-R" Restricted Industrial. The Appellant wishes to construct an indoor swimming pool within the planned business center. The pool would not be a swim club or public pool. Rather, what is proposed is a school for the teaching of swimming. The pool and school facility would be located indoors. Patrons of the school would sign up for a six week semester, during which the fundamentals of swimming would be taught. After this six week period, patrons would have no further right to use the pool. The pool would occasionally be rented on a limited, short term basis to outside groups. The pool will range from 2 ft. deep to 5 ft. deep.

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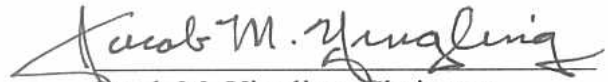
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The Appellant sought a ruling from the Carroll County Zoning Administrator on the question of whether the proposed use would be allowed in the planned business center. The Zoning Administrator, in a letter dated May 20, 2009, concluded that under the Code of Public Local Laws and Ordinances, §103-51, the proposed use was prohibited in a planned business center. The Appellant filed an appeal to the Board with the same question.

Section 103-51 of the Code of Public Local Laws and Ordinances of Carroll County governs planned business centers. Section 103-51 is a list of uses which are prohibited expressly in planned business centers. One of the listed prohibited uses is “swimming pools.” While the Appellant will unquestionably be using the property to teach swimming, it is equally clear that this use will necessarily require the installation of a “swimming pool.” The Board found that, for whatever reason, the County Commissioners, in enacting Section 103-51, clearly prohibited “swimming pools.” The Board must construe the language of the Ordinance, and it may not change the meaning of a plain and unambiguous law. While the Appellant’s proposed business may be inoffensive and a laudable use, it clearly and necessarily involves the installation of a swimming pool in a planned business center. As such, the Board concluded that the Zoning Administrator did not err in her application of Section 103-51 to this proposal, and the appeal is denied.

7/15/09

Date



Jacob M. Yingling, Chairman